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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,059	07/31/2003	Marinus Pieter de Vries	00601.0352-US-C1	2084

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EXAMINER

ISABELLA, DAVID J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,059	DE VRIES ET AL.	
	Examiner	Art Unit	
	DAVID J ISABELLA	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,9 is/are allowed.
- 6) ☒ Claim(s) 1-6,8,10-12 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/13/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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The disclosure is objected to because of the following informalities: applicant's amendment as filed on 7/31/03 fails to meet the requirements of the Office; and therefor, the amendment has not been entered into the specification. In response to the instant Office action, applicant should provide the changes according to the new Rules of Practice (ie clean and marked up copies of the specification).

Appropriate correction is required.

Election/Restrictions

Claims 13 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 13 in the parent application SN 09/690510 which is now abandoned. The restriction as set forth in the original application has been set forth below. The current application has the same figures and the same claims as the parent. The claims of the current application have been amended to clean up the language therein while keeping the scope the same.

This application contains claims directed to the following patentably distinct species of the claimed invention: Figure 2; Figure 5; Figure 6; and Figure 7.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Currently, claims 1-12 and 15 are pending for action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 as worded is confusing and unclear. There is no antecedent support for "the first derivative"; and it is not clear what is meant by "the first derivative". It is not clear what element(s) is(are) being displaced.

Claim 12, there is no antecedent support for "the intensity". The meaning of "comprising a base frequency and frequencies above" is confusing. It is not clear if the applicant is attempting to claim a range of frequencies including a base frequency and any frequency greater than the base frequency". It is not clear what is meant by "intensity is lower by 10-14dB/octave"? Intensity of what?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Blom, et al (4911716) or Blom (5507809).

Blom, et al et al discloses a voice producing prosthesis including a passage through a housing for passing air; at least one vibrantly movable element for producing sound; at least one stop for abruptly impeding the vibrating element in at

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least one position wherein the vibrating element is arranged to increase the sound volume and base frequency with intensity of airflow through the passage. See any of figures 2,5,17 and 21 and the corresponding description in the specification.

Claim 2, see flexible lip 28 and 434.

Claim 3, see figures 2,5,17 and 21 showing a flexible lip hingedly connected to the housing on one side thereof with the opposite side being unattached.

Claim 4, the free end of the flexible lip stops on the stop portion located opposite the hinged portion of the valve.

Claim 5, see any of figures 2,5, 17 and 21.

Claim 6, the flexible lip is pretensioned to abut against the stop as shown in any of the figures 2,5,17 and 21.

Claims 11 and 12, the function of the valve of Blom, et al is designed to carry out displacements and to generate vibrations and frequency as claimed.

Claim 15, see valve in figure 3 of Blom (5507809).

Claims 1,8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoendorfer et al (4223411).

Schoendorfer et al discloses a voice producing prosthesis including a passage through a housing for passing air; at least one vibrantly movable element for producing sound; at least one stop for abruptly impeding the vibrating element in at least one position wherein the vibrating element is arranged to increase the sound

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volume and base frequency with intensity of airflow through the passage. See any of figures 3,5,6 and 8 and the corresponding description in the specification.

Claim 8, the vibrating elements 15 and 19 are arranged as claimed by applicant.

Claim 10, see passage in figure 5.

Claims 11 and 12, the function of the valve of Schoendorfer, et al is designed to carry out displacements and to generate vibrations and frequency as claimed.

Allowable Subject Matter


Claims 7,9 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. SABELLA
Primary Examiner
Art Unit 3738

DJI
APRIL 28, 2004